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OFFICE OF PETITIONS

In re Application of
Christopher J. Horvath
Application No. 09/531,088
Filed: March 18, 2000
Attorney Docket No. 10147-22
(MPI2000-131)

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: DECISION ON PETITION
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This is a decision on the "Request for Reconsideration of Petition pursuant to 37 CFR §1.10(d)," filed April 15, 2002, requesting that the above-identified application be accorded a filing date of March 17, 2000, rather than the presently accorded filing date of March 18, 2000.

The petition is **DISMISSED**.

Petitioner maintains that the application was deposited in Express Mail service on March 17, 2000, pursuant to the requirements of §1.10. Petitioner maintains that the application was hand-carried to the United States Post Office at 30th and Market Streets, Philadelphia PA 19104 and was deposited with a postal clerk prior to midnight on March 17, 2000.

In a decision mailed February 6, 2002, the initial petition was dismissed for failure to show to the satisfaction of the Commissioner that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Petitioner did not establish the time of the last scheduled pickup for March 17, 2000. Nor did petitioner show that the date-in of March 18, 2000 was incorrectly entered by the USPS, as alleged.

On instant request for reconsideration, petitioner submitted further remarks in support of the petition and a declaration of patent attorney Gary D. Colby stating that the relevant Post Office was publicly known to be open 24 hours for receipt of items including Express Mail packages.

Paragraph (a) of 37 C.F.R. §1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit

date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See \$1.6(a).

(Emphasis supplied).

Moreover, paragraph (d) of 37 C.F.R. \$1.10 provides that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) the petition is filed promptly after the applicant becomes aware that the Office has accorded or will accord a filing date based upon an incorrect entry by the USPS;

(2) the number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) the petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

Petitioner's application was accorded the filing date of March 18, 2000, and the evidence supports a conclusion that this is the date of deposit of the correspondence with the USPS. The application of record is identified as having been mailed with Express Mail mailing label number EL399098346US. According to the Office's USPS Express Mail Information Database, the correspondence mailed under that Express Mail number was accepted by the USPS on March 18, 2000 at 12:01 am, delivery to the Office was attempted on March 18, 2000, and actual delivery occurred on March 20, 2000 at 11:00 in the morning (copy of printout enclosed). Thus, consistent with \$1.10, the Office accorded the application the date of deposit of the application with the USPS, as officially noted by the USPS.

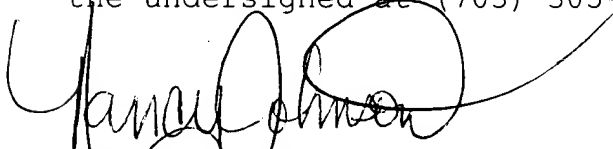
Petitioner's arguments and evidence have been considered, but not found persuasive. Given that the relevant Post Office accepts mail 24 hours a day, the according of a "date-in" of March 18,

2000 to a package received at 12:01 am appears appropriate. Petitioner has not shown that such an entry by the USPS was incorrect. Petitioner did not submit corroborating evidence from the USPS of error on their part in entering the "date-in." The declaration of attorney Colby is insufficient for this purpose. \$1.10(d)(3) requires corroboration from the USPS (or other appropriate corroborating evidence). The applicant respectfully urges that the refusal of the Postmaster to take any action in this matter speaks for itself. Petitioner contends that any statement issued by the Postmaster or any other representative of the USPS is irrelevant to these circumstances. However, silence on this issue by the Postmaster is not corroborative of petitioner's claims, but rather supports a conclusion that the USPS did not err in entering the "date-in." In the instance circumstances, a statement by the USPS acknowledging error is definitely relevant and is required pursuant to \$1.10(d)(3).

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the date of this decision in order to be considered timely. See 37 CFR \$1.181(f).

The application is being returned to Technology Center 1644 for examination in due course with the presently accorded filing date of March 18, 2000.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 305-0309.



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Office of the Deputy Commissioner
for Patent Examination Policy

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